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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,422	04/10/2001	Luke Surazski	2705-150	9550
20575	7590	04/18/2006	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204				JACOBS, LASHONDA T
ART UNIT		PAPER NUMBER		
		2157		

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/832,422	SURAZSKI, LUKE	
	<b>Examiner</b>	<b>Art Unit</b>	
	LaShonda T. Jacobs	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 25 January 2006.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5-9,12-19,22-31 and 34-42 is/are rejected.
- 7) Claim(s) 3,4,10,11,20,21,32 and 33 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Response to Amendment*

This Office Action is in response to Applicant Amendment/Request for Reconsideration filed on January 25, 2006. Claims 1-42 are presented for further examination.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5-9, 12-19, 22-31 and 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuster et al (hereinafter, "Schuster", U.S. Pat. No. 6,360,271) in view of Scott et al (hereinafter, "Scott", U.S. Pat. No. 6,859,460 and in further view of Smith et al (hereinafter, "Smith", U.S. Pat. No. 6,862,298).

As per claims 1, 8, 19 and 30, Schuster discloses a device, an article and method comprising:

- a network interface for coupling to a network (col. 14, lines 34-51);
- a memory (col. 14, lines 34-51); and
- a processor coupled with the network interface (col. 14, lines 34-51),
- retrieve a first jitter record for the first network region (col. 11, lines 48-58 and col. 12, lines 10-27); and

However, Schuster does not explicitly disclose:

wherein the processor is adapted to:

- consider a first connection through a network with a first endpoint of the network;

identify a first region in the network of the first network endpoint.

Scott discloses a method, system and computer program product for route quality checking and management comprising:

- wherein the processor is adapted to consider a first connection through a network with a first endpoint of the network; identify a first region in the network of the first network endpoint (col. 2, lines 25-63).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated Scott's teachings of a method, system and computer program product for route quality checking and management with the teachings of Schuster for the purpose of a system that enables users to access the route quality check and management and/or other route information for a particular group or individual.

However, Schuster in view of Scott does not explicitly disclose

- allocate a first portion of a memory for jitter buffer storage for the first connection; the first portion having a size in accordance with first jitter data in the first jitter record.

Smith discloses an adaptive jitter buffer for Internet telephony comprising:

- allocate a first portion of a memory for jitter buffer storage for the first connection; the first portion having a size in accordance with first jitter data in the first jitter record (col. 7, lines 21-33).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated Smith's teachings of adaptive jitter buffer for Internet telephony with the teachings of Schuster in view of Scott for the purpose of being able to adapt to changing network conditions.

As per claims **2, 9, 13, 31 and 35**, Schuster discloses:

- wherein the first connection is a VoIP connection (col. 6, lines 53-65).

As per claims **5, 12, 22 and 34**, Schuster discloses:

- wherein the first jitter data contains a first jitter performance statistic of a formerly tracked jitter of at least one endpoint in the first network region (col. 11, lines 20-30 and lines 48-58).

As per claims **6, 14, 16, 23, 27, 36 and 40**, Schuster discloses:

- wherein the first jitter performance statistic is determined from at least one of a cumulative average jitter and a cumulative jitter variability (col. 12, lines 10-27).

As per claim **7, 15, 26 and 39**, Schuster discloses wherein the processor is further adapted to:

- establish the first connection (col. 6, lines 53-65);
- track a jitter while communicating over the first connection (col. 11, lines 20-30 and lines 48-58); and
- update the first jitter performance statistic in accordance with the tracked jitter (col. 12, lines 43-55).

As per claims **17, 28 and 41**, Schuster further discloses:

- means for storing the updated jitter statistic (col. 12, lines 43-55).

As per claims **18, 29 and 42**, Schuster further discloses:

- means for updating the first portion to have a size in accordance with the updated first jitter performance statistic (col. 12, lines 43-55).

As per claims **24, 25, 37 and 38**, Schuster discloses:

- wherein the first jitter performance statistic is dependent upon a time of a day (col. 12, lines 56-67 and col. 13, lines 1-5), and wherein the instructions further result in:
- inputting the time of the day (col. 12, lines 56-67 and col. 13, lines 1-5).

#### *Allowable Subject Matter*

3. Claims 3, 4, 10, 11, 20, 21, 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

4. Applicant's arguments with respect to claims 1, 2, 5-9, 12-19, 22-31 and 34-42 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 571-272-4004. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs  
Examiner  
Art Unit 2157

ltj  
April 4, 2006



LaShonda T. Jacobs

LA SHONDA M. JACOBS  
PATENT EXAMINER